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No. 296

In the Supreme Court of the United States

OCTOBER TERM, 1938

THE UNITED STATES OF AMERICA, APPELLANT

vs.

MIDSTATE HORTICULTURAL COMPANY, INC., AND AHPAXAT SHIRAKIAN

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF PENNSYLVANIA

STATEMENT AS TO JURISDICTION

In the District Court of the United States for the Eastern District of Pennsylvania

No. 7380

UNITED STATES OF AMERICA, PLAINTIFF

v.

MIDSTATE HORTICULTURAL COMPANY, INC., AND ARPAXAT SETRAKIAN, DEFENDANTS

STATEMENT AS TO JURISDICTION

[Filed July 20th, 1938]

In compliance with Rule 12 of the Supreme Court of the United States as amended, United States of America submits herewith its statement showing the basis of the jurisdiction of the Supreme Court to entertain an appeal in this cause.

A. The statutory jurisdiction of the Supreme Court to review by direct appeal the judgment complained of is conferred by Title 18, Section 682, of the United States Code, otherwise known as the Criminal Appeals Act, and by Section 345, Title 28 of the United States Code.

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B. The statute of the United States, the construction of which is involved herein is the Act of February 19, 1903, c. 708, 32 Stat. 847 (re-enacted in Section 2 of the Hepburn Act of June 29, 1906, c. 3591, 34 Stat. 587); 49 U. S. C. A., Section 41 (1), otherwise known as the Elkins Act, section 1 of which (a) declares it to be a misdemeanor for any person or corporation to offer, grant or give, or to solicit, accept, or receive a rebate, concession, or discrimination in respect to the transportation of property in interstate commerce by any common carrier subject to the Act to regulate commerce whereby such property shall by any device whatever be transported at less than the published rate, and (b) provides that—

> Every violation of this section shall be prosecuted in any court of the United States having jurisdiction of crimes within the district in which such violation was committed, or through which the transportation may have been conducted; and whenever the offense is begun in one district and completed in another it may be dealt with, inquired of, tried, determined, and punished in either jurisdiction in the same manner as if the offense had been actually and wholly committed therein.

C. The judgment of the District Court sought to be reviewed was rendered on June 21, 1938, and an application for appeal was presented and allowed on July 20, 1938.

D. The indictment alleges that the defendants solicited, accepted, and received from The Pennsylvania Railroad Company, in respect to interstate shipments of property which that company and other common carriers by railroad transported for appellees as consignors thereof, rebates and concessions whereby such property was transported at less than the published and filed rate through the Eastern District of Pennsylvania and within the jurisdiction of the United States District Court for the Eastern District of Pennsylvania.

A demurrer to the indictment was filed by the defendants and was sustained by the District Court solely on the ground that the offenses charged, if they actually existed, were committed at New York, N. Y., where the Railroad Company's agent handed to the defendants a check for the amount of the rebates and hence that jurisdiction thereof was in the District Court for the Southern District of New York and not in the District Court for the Eastern District of Pennsylvania.

E. The question involved is substantial. The construction placed by the District Court upon the jurisdictional provision of the Elkins Act is contrary not only to the language of the Act but also to the practical interpretation through prosecutions for violations of the Act since the date of its enactment. The District Court's construction would seriously interfere with and render far more

difficult the future administration and enforcement of the Act.

F. The following decisions are believed to sustain the jurisdiction of the Supreme Court to entertain this appeal:

> *United States* v. *Keitel*, 211 U. S. 370; *United States* v. *Nixon*, 235 U. S. 231; *United States* v. *Hastings*, 296 U. S. 188; *United States* v. *Curtiss-Wright Corp.*, 299 U. S. 304.

A copy of the District Court's opinion filed June 16, 1938, is appended hereto.

Respectfully submitted.

(Sgd.) N. A. Townsend,
N. A. Townsend,
Acting Solicitor General.

(Sgd.) J. Cullen Ganey,
J. Cullen Ganey,
United States Attorney.

(Sgd.) Edward A. Kallick,
Assistant U. S. Attorney.

July 1938.

In the District Court of the United States for the Eastern District of Pennsylvania

No. 7380

UNITED STATES OF AMERICA

vs.

MIDSTATE HORTICULTURAL COMPANY, INC., AND ARPAXAT SETRAKIAN

[December Sessions, 1936]

No. 7382

UNITED STATES OF AMERICA

vs.

THE PENNSYLVANIA RAILROAD COMPANY

[December Sessions, 1936]

SUR DEMURRERS TO INDICTMENTS

(Filed June 16th, 1938)

WELSH, J.:

The question is solely one of jurisdiction as to whether or not this is the proper district in which

the case should be tried. The Act (49 U. S. C. A., Sec. 41) provides, in part, as follows:

> Every violation of this section shall be prosecuted in any Court of the United States having jurisdiction of crimes within the district in which such violation was committed, or through which the transportation may have been conducted. * * *

In Section 1 of the above referred to Act, the crime is defined as follows:

> Every person or corporation whether carrier or shipper, who shall knowingly offer, grant, or give, or solicit, accept, or receive, any such rebate, concession, or discrimination, shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by a fine of not less than $1,000 nor more than $20,000.

This is an indictment for rebates alleged to have been given by the Pennsylvania Railroad Company, hereinafter referred to as the Railroad, to Midstate Horticultural Company, Inc., the shipper, hereinafter referred to as Midstate. The Government filed two indictments growing out of these transactions, one against the railroad, and one jointly against Midstate and Arpaxat Setrakian. The shipment covered grapes and they were shipped from various points in the West to New York. Thereafter, by reason of damage to the shipment, it became necessary for the grapes to be sold. It is alleged by the railroad that the check subse-

quently given to Arpaxat Setrakian was an adjustment of this loss incurred by the shippers. It is proper to mention that the full lawful rates were paid for the transportation of the various shipments, all of which terminated more than two years prior to the date of payment of the alleged rebate.

In an argument before the Court on the question of where the crime took place and the nature of the rebate, the Court ordered that a bill of particulars be filed. In reply thereto, the United States filed a bill of particulars stating that * * * "the check was in effect given by the Pennsylvania Railroad Company to Mr. Setrakian in the City of New York, New York * * *."

Both sides to this controversy have filed very illuminating briefs and the case argued most ably by counsel. The briefs quite extensively cite leading cases on the subject of rebates and there is, undoubtedly, some conflict of authority between the decisions of the lower courts. This Court, however, is of the opinion that our construction of the case hinges entirely on the question of jurisdiction.

If any violation of the law occurred as alleged, the case should be tried in New York. The Court is of the opinion that under all of the facts, jurisdiction is not in this Court, and, so holding, the demurrers are sustained.

U. S. GOVERNMENT PRINTING OFFICE: 1938